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HOUSE BILL 166

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Hector H. Balderas

AN ACT

RELATING TO THE PRACTICE OF LAW; PROHIBITING THE UNAUTHORIZED PRACTICE OF LAW; PROVIDING CIVIL AND CRIMINAL PENALTIES; PROVIDING A PRIVATE RIGHT OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 36-2-27 NMSA 1978 (being Laws 1909, Chapter 53, Section 26, as amended) is repealed and a new Section 36-2-27 NMSA 1978 is enacted to read:

"36-2-27. [NEW MATERIAL] PRACTICE OF LAW DEFINED-- UNAUTHORIZED PRACTICE OF LAW PROHIBITED-- PENALTY. --

A. The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another person that require the skill of a person trained in the law. The practice of law includes:

- (1) giving advice or counsel to another as to

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1 that person's legal rights or responsibilities;

2 (2) selecting, drafting or preparing any
3 document in any medium intended to affect or secure legal
4 rights or incur legal obligations for a specific person;

5 (3) representing a party in a judicial, quasi-
6 judicial or administrative proceeding or other dispute
7 resolution process, including arbitration or mediation; or

8 (4) negotiating legal rights or
9 responsibilities on behalf of another person.

10 B. Except as provided in Subsection C of this
11 section, the unauthorized practice of law occurs when a person,
12 without a certificate of admission to the bar pursuant to the
13 provisions of Chapter 36, Article 2 NMSA 1978 and the rules of
14 the supreme court of New Mexico:

15 (1) engages in the practice of law;

16 (2) holds himself out as an attorney or
17 counselor at law; or

18 (3) advertises or displays any matter or
19 medium designed to give the impression that the person is an
20 attorney or counselor at law.

21 C. The unauthorized practice of law does not
22 include:

23 (1) the practice of law by a public employee
24 or law professor holding a limited license issued pursuant to
25 rules promulgated by the supreme court;

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1 (2) the provision of services by a paralegal
2 pursuant to rules promulgated by the supreme court;

3 (3) the provision of services as a mediator,
4 conciliator or facilitator whether in a neutral, non-
5 adjudicative capacity or in an adjudicative capacity;

6 (4) the participation in a labor negotiation,
7 arbitration or conciliation arising under collective bargaining
8 rights or agreements;

9 (5) lobbying activities conducted by a
10 lobbyist registered pursuant to the Lobbyist Regulation Act;

11 (6) the practice of law before a court or
12 administrative body pursuant to pro hac vice rules of the
13 supreme court; or

14 (7) the provision of any other service
15 expressly allowed by a law, court rule or federal or state
16 administrative rule.

17 D. Any person who willfully engages in the
18 unauthorized practice of law is guilty of a misdemeanor and
19 shall be fined an amount not to exceed five hundred dollars
20 (\$500) or imprisoned for a period not to exceed six months, or
21 both. "

22 Section 2. A new section of Chapter 36, Article 2 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] UNAUTHORIZED PRACTICE OF LAW - PRIVATE
25 REMEDIES. --

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1 A. A person likely to be damaged by an authorized
2 practice of law in violation of Section 36-2-27 NMSA 1978 may
3 bring an action for an injunction against the alleged violator.
4 An injunction granted shall be pursuant to the principles of
5 equity and on terms that the court considers reasonable. Proof
6 of monetary damage or loss of profit is not required for a
7 injunction to be granted pursuant to this subsection.

8 B. A person who suffers a loss of money or other
9 property as a result of an unauthorized practice of law in
10 violation of Section 36-2-27 NMSA 1978 may bring an action for
11 the greater of actual damages or one thousand dollars (\$1,000)
12 and the restitution of any money or property received by the
13 alleged violator; provided that, if the court finds that the
14 alleged violator willfully engaged in the unauthorized practice
15 of law, the court may award up to three times the actual
16 damages or three thousand dollars (\$3,000), whichever is
17 greater.

18 C. A person bringing an action pursuant to
19 Subsection A or B of this section shall, if the person
20 prevails, also be awarded attorney fees and costs.

21 D. The relief provided by this section is in
22 addition to other remedies available at law or equity."

23 Section 3. A new section of Chapter 36, Article 2 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] UNAUTHORIZED PRACTICE OF LAW - ACTION BY

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1 ATTORNEY GENERAL. --

2 A. Whenever the attorney general has reason to
3 believe that a person has engaged in the unauthorized practice
4 of law in violation of Section 36-2-27 NMSA 1978 or has aided
5 or abetted another person in the unauthorized practice of law
6 and that proceedings would be in the public interest, the
7 attorney general may bring an action in the name of the state
8 against the alleged violator. The action may be brought in the
9 district court for the county in which the alleged violator
10 resides or has a principal place of business or in the district
11 court for a county in which the alleged violation took place.
12 In an action brought pursuant to this section, in addition to
13 civil penalties, the attorney general may petition the court
14 for a temporary or permanent injunction and restitution, and,
15 if seeking a temporary or permanent injunction, the attorney
16 general shall not be required to post bond.

17 B. In lieu of filing or continuing an action
18 pursuant to this section, the attorney general may accept a
19 written assurance of discontinuance of the unauthorized
20 practice of law from the alleged violator. The assurance may
21 contain an agreement by the alleged violator that restitution
22 will be made to all persons of money or property received from
23 them in any transaction related to the unauthorized practice,
24 provided that a person harmed by the unauthorized practice is
25 not required to accept restitution but, if the restitution is

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1 accepted, the person accepting the restitution is barred from
2 recovering damages from the alleged violator in an action based
3 upon the same unauthorized practice. The fact of the
4 settlement shall be a public record but the settlement
5 agreement shall be confidential and not admissible in a
6 subsequent proceeding brought by another person or public body
7 against the person who entered into the settlement.

8 C. In an action brought by the attorney general
9 pursuant to this section, if the court finds that the alleged
10 violator engaged in the unauthorized practice of law, the court
11 may impose a civil penalty not to exceed five thousand dollars
12 (\$5,000) per violation. In addition, if the court finds that a
13 person has aided or abetted another to engage in the
14 unauthorized practice of law, the court may impose a civil
15 penalty not to exceed one thousand dollars (\$1,000) for the
16 first violation and a civil penalty not to exceed five thousand
17 dollars (\$5,000) for each subsequent violation. "

18 Section 4. REPEAL. -- Section 36-2-28 NMSA 1978 (being Laws
19 1925, Chapter 100, Section 12) is repealed.